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## ABSTRACT

Examination of several library legislation models developed to meet the needs of developed and developing nations reveals that our traditional notion of the library's role in society must be abandoned if we wish to reconcile its benefits to its costs. Four models currently exist: many nations, particularly Asian, have no legislation; most nations, including the United States, have multi-tiered systems in which legislation is basically permissive; in others, most notably Scandinavian, library legislation is of a mandatory nature and centrally administered; and finally, the socialist countries have a unitary library system governed by a central board. Despite these differences, all systems show a trend toward increased centralization. In many countries it is felt that the volume of law is outpacing society's ability to absorb it, and the resulting financial and social costs outweigh the benefits. What is needed for libraries now is a narrower concept of service, with library services freely subject to the laws of supply and demand. Legislation, if needed at all, should be of a permissive rather than a restrictive nature. (RAA)

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Library Legislation

by

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## I. INTRODUCTION

For some time it has been axiomatic that, without governmental support in the form of legislation, libraries as we now know them would cease to exist.<sup>1</sup> The first international declaration on the need for and function of the public library, which was drafted in 1949 by the United Nations Educational, Scientific and Cultural Organization (UNESCO), provided that "as a democratic institution operated by the people for the people, the public library should be: established and maintained under clear authority of law: supported wholly or mainly from public funds: open for free use on equal terms to all members of the community. . . ."<sup>2</sup> Yet in many parts of the world, libraries existed long before library legislation, compulsory public education or even the modern nation-state.<sup>3</sup> Moreover, while all countries have libraries in one form or another, less than a quarter of the independent nations of the world, or roughly 30 countries, have effective library legislation.<sup>4</sup> Consequently, the notion that public libraries must have a foundation in the laws of sovereign communities, states and nations is of comparatively recent origin.<sup>5</sup>

the establishment, administration and maintenance of libraries and library systems.<sup>6</sup> Even where library legislation has been long established, however, it can be seen that, in the framework of the modern state, library legislation is noticeably defective.<sup>7</sup> Few legislative models have produced adequately satisfactory results because legislative efforts have been haphazard at best and incompetent or unrealistic at worst. Law, which was once regarded as a means to solve economic inequities through so-called "social engineering" adjustments, is now frequently seen as an imperfect device with a constrictive effect on the development of libraries. In most countries, however, the governmental<sup>8</sup> and professional<sup>9</sup> response to legislative inefficiency has been the promulgation of more legislation -- a pyramiding process that Bayless Manning recently characterized as "hyperlexis . . . the pathological condition caused by an overactive law-making gland."<sup>10</sup>

Adding to the confusion is the fact that in some developed nations, government officials are currently faced with a mounting taxpayer revolt.<sup>11</sup> The trend in public support for library service in those nations is two-

pronged: increased public unwillingness to fund some educational, cultural and library services that have traditionally been provided by government; and increased governmental willingness to reduce or eliminate budget appropriations for such services. Efforts to solve the "tax revolt" problem have led to additional legislation, which has in turn aggravated the "hyperlexis" problem.

The purpose of this paper is to discuss several models for library legislation that have been developed to meet the needs of both developed and developing nations, and to critique those models by analyzing their economic and social costs and benefits. It will be proposed that we must abandon our traditional notion of the library's role in society before we can harmonize the need for information services with the need for less legislation and lower taxes.

## II. A COMPARATIVE OVERVIEW OF LIBRARY LEGISLATION: FOUR BASIC MODELS

In his landmark 1971 study of library legislation in 14 countries,<sup>12</sup>

Frank Gardner suggested that every country has adopted one of four basic legislative models as a foundation for its library system.<sup>13</sup> First, many

nations have no legislation at all. All the developing nations of Asia

except four Indian states fall into this category.<sup>14</sup> Second, most nations, including the United States, have multi-tiered library systems, in which national and state libraries coexist with independent public libraries at the local government level.<sup>15</sup> In such nations national and state library legislation is permissive rather than mandatory, in that local governments are not required to provide public library service.<sup>16</sup> Third, in some nations, most notably the United Kingdom and the Scandinavian countries, local authorities are required rather than permitted to provide public library service.<sup>17</sup> In such nations local libraries will be responsible to a central body, generally a government agency or ministry, whose function is executive as opposed to merely advisory.<sup>18</sup> Finally, in some countries, most notably the socialist countries of eastern Europe and some developing nations in Africa, there are no local libraries but rather a unitary national library system governed by a central controlling board.<sup>19</sup>

Despite the existence of four basic models, however, Gardner noted that a single pattern emerged from a comparative study of all library legislation in the 14 countries he surveyed:

first . . . a search for a larger and more viable unit of service, which must be both geographically and financially able to deploy larger resources for public library service, and second . . . the creation of a central advisory body to encourage improvement of public library service.<sup>20</sup>

In other words, the trend Gardner observed in countries having library legislation was one of increasing library centralization, in an apparent effort to seek a broader tax base and provide a wider range of services to all members of the largest possible geographical and political unit.<sup>21</sup>

Gardner's excellent work did not attempt to state which of the four models was most efficient from a cost/benefit standpoint, or even whether any legislative model was ultimately successful in providing the greatest service to the greatest number. It is largely the purpose of this paper to address those issues.

### III. LEGISLATION AS AN IMPERFECT DEVICE

#### TO ACHIEVE LIBRARY DEVELOPMENT

##### A. The Social and Economic Costs of Library Legislation

The realization that in most countries the volume of law has far outpaced society's capability to absorb it is not a recent development.

charged that too many laws are made."<sup>22</sup> That charge was repeated in 1977,

when in a short but probing article Bayless Manning warned that the American body politic was being slowly incapacitated by the profusion

of legislation.<sup>23</sup> Manning's analysis noted the prohibitive economic or

dollar cost of legislation, and asked "[w]hat does it cost to operate

our elaborate institutional machinery of federal, state, and local courts,

prosecutors, bailiffs, investigators, administrative agencies, police,

examiners, lawyers, law schools, legal aid programs, law publishers,

correctional facilities, etc.?"<sup>24</sup> The notion, implicit in Manning's

analysis but explained in detail by Richard Posner,<sup>25</sup> that the cost of

legislation should not outweigh the benefits derived therefrom, is rooted

in the economic concept of "efficiency." As Professor Posner defines

that term:

"Efficiency" means exploiting economic resources in such a way that "value".-- human satisfaction as measured by aggregate consumer willingness to pay for goods and services -- is maximized. Willingness to pay, the basis of the efficiency and value concepts, is a function of many things, including the distribution of income and wealth.<sup>26</sup>

In the United States and other developed countries, the costs of

legislation have grown to the point that they now outweigh the benefits

conferred upon society by legislation. According to Manning, "[a]fter a generation in which the most rapidly growing sector of the economy has been state and local government, all of a sudden a large segment of public opinion has begun to press for smaller government, not larger."<sup>27</sup>

In recent years this widespread public sentiment has exploded into a full-scale "tax revolt" that has forced the drastic curtailment of library and other governmental services.<sup>28</sup> In purely economic terms, the state's power to confer benefits upon its people by legislation is limited by the people's willingness to pay the cost of such legislation.

While economic cost is important, it is not all-important.<sup>29</sup> Even more significant are the social costs of legislation: the litigation explosion and clogged court calendars, declining public respect for the law, favoritism of the wealthy who can afford the best-trained legal counsel, inability of the economy to respond quickly to changes due to heavy regulation of business, and procedural complexity.<sup>30</sup> As Manning succinctly concludes:

Our legislatures, courts and agencies must eventually recognize, and the public must come to see, that the legal system simply cannot operate if it tries to provide for every citizen and institution a law suit against every other citizen

or interest, to redress every perceived invasion of privilege, and to recompense every risk of living. The ultimate results of that approach will be to halt the legal process and simultaneously frustrate the society's capacity to make policy decisions. However unpalatable and unpopular it may be to say it in today's climate, the American legal system must continue to concentrate upon the rights of the individual, but it must now also turn its attention to the collective need of the community for a governmental and legal system that functions with reasonable effectiveness. The alternative will be a massive socio-legal traffic jam. In a legal system that tries to offer everybody a remedy for everything, no one will have a remedy for anything.<sup>31</sup>

What Manning observes about legislation in general is true of library legislation in particular, since libraries are among the first and most to suffer when governmental units approve budget cuts due to public pressure. Moreover, what Manning notes about the American situation is true in other developed countries as well. Although many nations have not experienced a "tax revolt" as such, there comes a point in every nation's history when the public deems the cost of governmental action to outweigh the benefits derived therefrom, and chooses persuasive means to restore equilibrium. The result may be a tax revolt, a protest movement, or a revolution.

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B. Toward a New Concept of "Service"

Identifying the economic and social costs and benefits of library service is a most difficult task at present, because library legislation has seldom if ever attempted to define what the public library should provide.<sup>32</sup> It is universally assumed that library services when provided should be available to all within a given community.<sup>33</sup> That assumption, while valid, often leads to the conclusion that libraries should provide all things to all people<sup>34</sup> and serve all tastes within that community. Libraries, it is argued, should draw no distinction between the citizen who only reads murder mysteries, the citizen who only reads Shakespeare, and the citizen who does not read at all but listens only to recordings of popular music. This conclusion, while valid in the days before the current worldwide information explosion, is so no longer, and should be abandoned in favor of a narrower concept of "service."

Libraries, which until the mid-twentieth century acted only as repositories of books, have since begun to provide additional commodities and services to the public that have been collectively and loosely labelled "information services." Thus in most countries libraries provide not only

pictures, microfilm and microfiche facilities. Among the services now provided by libraries are reference and research assistance, bibliography compilation, computer services, and the use of library premises for meetings and exhibitions, film shows, musical performances and the holding of other events of a cultural nature.<sup>35</sup> To analyze the social and economic costs of library service, it is necessary to undertake cost/benefit analysis of each of these varied commodities and services in light of what society is willing to pay for it. What emerges from such an analysis is a form of zero-based budgeting for libraries -- if a particular commodity or service can no longer justify its economic or social cost base, it should be eliminated, and all legislation supporting that commodity or service should be repealed.

Books, for example. In every library in the world today, there are basically two classes of books: high-use books of general interest, and low-use books of more specialized appeal. Popular books and periodicals, classics of literature, and "do-it-yourself" volumes may fall into the former category; technical journals, scholarly studies, and out-of-date books may fall in the latter. It has generally been assumed by librarians

and legislators alike that the economics of providing high-use and low-use books are basically the same, that the presence of high-use books will lead to increased use of low-use books, and that in any case the public library has a duty to serve all tastes within a given community even though only a handful of citizens are willing to pay for a particular low-use item.

Recent experience has belied this assumption. While literacy has advanced at an unprecedented rate throughout the world, the cultivation of reading as a habit has effectively declined with the proliferation of new and competing media.<sup>36</sup> Moreover, as the "tax revolt" phenomenon illustrates, people in at least some countries are increasingly unwilling to pay for benefits for which they themselves will have little use.<sup>37</sup>

The inevitable conclusion is a simple one but is difficult to accept for many library professionals: public libraries can no longer be all things to all people. If libraries as we know them are to survive with public support, they must be willing to provide only those commodities and services for which the public is willing to pay.<sup>38</sup> It may be objected that such a proposal would place libraries at the mercy of the "tyranny

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of the majority" within a given community, since majoritarian interests

invariably control the political processes of those societies that have a popular franchise.. Such domination, it is argued, would lead to the extinction of many valuable works that are not widely read. The short answer to this, of course, is that if a particular work is valuable it will be read, but the author does not wish to be accused of literary Darwinism. Such criticism can instead be answered by reference to the economic law of supply and demand: where there is a demand for specialized library commodities and services, someone will find it profitable to provide them. If the demand is present, consumers who are interested in a specialized library service will pay for it out of their own pockets. The approach suggested in this paper will require consumers with specialized interests in library service to pay for public libraries whose benefits they will not enjoy. Moreover, it would mean that, to the extent users of public libraries would receive a certain amount of benefit for which not they but rather the specialized users have paid, there will be economic "externalities" of a sort. This would nevertheless be preferable to the current state of affairs in many countries where the majority is required by law to provide specialized library commodities

and services in which they are not interested.

C. Permissive vs. Restrictive Legislation

What has been suggested in this paper is not necessarily new; many scholars and commentators have agreed that our traditional concept of a public library should give way to the more flexible concept of an "information center."<sup>39</sup> These scholars unanimously suggest, however, that the only way to create such centers is by passing more legislation and expending more public funds.<sup>40</sup> For example, a recent article by a prominent New York City librarian suggests that "new forms of publicly-supported information services should be developed when such functions serve the dual purpose of expanding benefits to both the general public and the information industry."<sup>41</sup> It is on this point that the author respectfully dissents from his predecessors; this paper proposes that less, not more, legislation is needed to bring about the desired "information center" concept, and that where library legislation is deemed absolutely necessary to avoid constitutional problems it should take the form of permissive as opposed to restrictive legislation.

The distinction between permissive and restrictive legislation was first formulated by Jeremy Bentham some 175 years ago<sup>42</sup> and remains viable to this day. A permissive law says only that you can do something if you want to do it, while a restrictive law either requires you to do something or forbids you from doing it.<sup>43</sup> The trend in most countries today is to replace permissive library legislation with restrictive library legislation. Local authorities are increasingly required rather than permitted to provide a public library service, and local laws increasingly tend to enumerate the specific commodities and services to be provided.

If our goal, however, is to foster a variety of "information centers" that serve either majoritarian or specialized interests, that goal can best be reached by legislation that gives local and national authorities the discretion to develop whatever type of library service their constituencies are willing to finance.<sup>45</sup> Such legislation will permit public libraries to alter their services to meet changing public demands without fomenting additional legislation, will permit the creation of specialized libraries without increasing taxes and thereby causing taxpayer

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discontent, will permit the creation of paid public libraries where a community has elected not to provide public library service at taxpayer cost, and will permit the free play of market forces to shape the development of new library commodities and services.

The legislative model that will best bring about this result in a particular country will depend largely upon the constitutional system that country has adopted.<sup>46</sup> In those countries in which local authorities can act in any matter not specifically proscribed by the laws of a higher governmental unit or by the national constitution (West Germany is an example),<sup>47</sup> the best legislative model would be no library legislation at all. In those countries in which local authorities cannot act in any matter not specifically authorized by the laws of a higher governmental unit or by the national constitution (France is an example)<sup>48</sup> the best legislative model would be permissive legislation setting forth only minimum guidelines for library administration, standards and finance.

#### IV. CONCLUSION: DEREGULATION OF LIBRARIES

The assumption that, without government support in the form of legislation public libraries as we now know them would cease to exist,

is quite plausible. Public libraries as we now know them, however, are no longer worthy of continued existence. They involve a spiralling proliferation of commodities and services whose cost will at some point exceed the public's willingness to receive them. Only by radically changing our concepts of "library" and "library service" can we provide information services without increasing the volume of legislation, without increasing taxes, and without causing public discontent.

What has been suggested in this paper is nothing less than the deregulation of libraries. More permissive legislation, or no legislation at all, will give free play to the economic law of supply and demand, and will guarantee that the public will pay only for the library service it wants.

\* (author's biography and acknowledgments)

1. See F. GARDNER, PUBLIC LIBRARY LEGISLATION: A COMPARATIVE STUDY 15 (1971). The proposition was first stated in 1849 by Edward Edwards, pioneer of the public library in Great Britain:

Without some assured provision of the means of continued increase, as well as simple preservation -- no man ever secured to posterity the true advantage of a public library. To those persons, therefore, who took thought of such matters, two principles to start with seemed plain. The one that new libraries should be formed in a catholic spirit. The other, that they should be freed from all dependence either in gifts or in current 'subscriptions', for their permanent support. The first principle involved the corollary that the new institutions and their management should stand entirely aloof from party influences in politics or religion. The second principle involved the corollary that the maintenance must be by rate, levied on the whole tax-paying community, and administered by its elective and responsible functionaries.

Id. at 16.

2. Id. at 17. UNESCO's declaration of policy did not, however, propose specific legislation. For a concise summary of UNESCO's suggested guidelines for library legislation as articulated in subsequent years, see id. at 17-21.

3. Id. at 15-16.

4. Id. at 34.

6. Scholars of library science have to date undertaken little comparative analysis of library legislation. The unique work in the field is F. GARDNER, supra note 1, which surveys library systems and their legislative framework in 14 nations: Finland, Norway, Denmark, Sweden, Great Britain, Ireland, Czechoslovakia, Hungary, Canada, the United States, Ghana, Tanzania, Botswana, and India. Additional background information for comparative analysis can be found in the 26-volume ENCYCLOPEDIA OF LIBRARY AND INFORMATION SCIENCE (A. Kent, H. Lancour & J. Daily eds. 1968-1979); Library, in 13 ENCYCLOPAEDIA BRITANNICA 1031-62 (1968); and works cited therein.

7. F. GARDNER, supra note 1, at 15, 34.

8. The governmental response has generally taken the form of legislation amending existing library laws. Id. at 34.

9. For an example of the library professional's proposed solution to inadequate library legislation in the United States, see Owen, Libraries & Information Industries: Legislation for Joint Development, 102 LIB. J. 1819 (1977).

10. Manning, Hyperlexia: Our National Disease, 71 NW. U.L. REV.

767, 767 (1977). Manning explains:

Measuring by any and every index, our law is exploding. New statutes, regulations, and ordinances are increasing at geometric rates at all levels of government. The same is true of reported decisions by courts and administrative agencies. Whole new legal fields spring into being overnight, such as environmental law; older fields like real property are experiencing infinite fission. Statutory codes, such as those in the fields of commercial law and taxation, are becoming ever more particularistic, longer, more complex, and less comprehensible. We are drowning in law.

Our situation is aggravated by the wind of legal commentary set off by the firestorm of law. Law has always been one of the garrulous professions, and modern communications gadgetry makes it all too easy to record, reproduce, and distribute legal words. As in the wake of a great ship mewing seagulls follow, so legal commentators pursue the society's law-making machines, squabbling over the newly emitted material. Our law libraries are swamped, our citizenry is confounded by the legal blizzard, and our imperilled forest reserves are further depleted.

*Id.* at 767. Manning's analysis is focused on United States law, but is equally applicable to legislation in other developed nations.

11. For illustrations of the impact of the "tax revolt" on some public libraries in the United States, see Holt, Proposition 13 Threatens Cuts for California Library System, 214 PUB. W. 16 (1978); Budget Clashes Threaten School & Public Libraries, 24 SCHOOL LIB. J. 11 (1977); Budget Crunch Forces Library Service Cuts, 100 LIB. J. 85 (1976).

14. Id. at 46-47.

15. Id. at 41.

16. Id.

17. Id. at 36-37.

18. Id. at 36, 47.

19. With respect to the library systems of Ghana, Sierra Leone,

Nigeria, Tanzania and Kenya, Gardner wrote:

The outstanding feature of almost all African legislation is that the problem of the size of unit and the capability of local government has been boldly grasped by making the whole country the unit, with a single board of control. Although there may be provision for the co-operation of local government, in Ghana for example, the income of the board includes any grants from local town councils; the sole executive responsibility rests with the board of control, and there is no devolution of powers.

Id. at 47.

20. Id. at 35.

21. This trend is particularly observable in Germany and Japan.

See Nakamura, Libraries and Information Centers in Japan, in 13

ENCYCLOPEDIA OF LIBRARY AND INFORMATION SCIENCE 222-38 (A. Kent, H.

Lancour & J. Daily eds. 1975); Fuchs, Hodes, Ernestus, Oertel, Arntz,

Information Centers in Germany, in 9 ENCYCLOPEDIA OF LIBRARY AND INFORMATION SCIENCE 395-545 (A. Kent, H. Lancour & J. Daily eds. 1973).

The centralization process has taken place either by legislatively-mandated consolidation of national and local libraries, as in England and Wales, F. GARDNER, supra note 1, at 39, or by legislatively-mandated cooperation between national and local libraries. For an argument favoring such interlibrary cooperation in the United States, see Owen, Federal & State Library Legislation: A United Strategy, 102 LIB. J. 988 (1977).

22. R. LUCE, LEGISLATIVE PROBLEMS 618 (1935).

23. Manning, supra note 10, at 767.

24. Id.

25. R. POSNER, ECONOMIC ANALYSIS OF LAW 399-418 (1976).

26. Id. at 10 (emphasis in original). Manning explained:

One should have no illusions that the democratic law-making process can be made, or should be made, a model of efficiency. Its democratic character is worth far more than cost/benefit elegance. It is inevitable that legislators and other public officials will sometimes use law making for moral posturing. If a bill is proposed to declare sin illegal, very few legislators can be expected to vote against it on the ground that will not be effective, will be expensive to try to enforce, and will dilute the

efficiency of the rest of the legal system -- even though all that is true. Nonetheless, we can do quite a lot to build into the law-making machine a series of governors or brakes to inhibit our presently unrestrained law-generating process.

Manning, supra note 10, at 782.

27. Manning, supra note 10, at 782.

28. See authorities cited in note 11 supra.

29. Manning, supra note 10, at 767.

30. Id. at 768-70. For a similar cost-benefit analysis of

United States courts, see J. BRENNAN, THE COST OF THE AMERICAN JUDICIAL SYSTEM (1966).

31. Manning, supra note 10, at 780-81.

32. F. GARDNER, supra note 1, at 45.

33. See id. at 43; text accompanying note 2 supra.

34. See text accompanying note 31 supra.

35. F. GARDNER, supra note 1, at 45.

36.

37. See authorities cited in note 11 supra.

38. See text accompanying note 31 supra.

39. See, e.g., Owen, Libraries & Information Centers: Legislation for Joint Development, 102 LIB. J. 1819 (1977).

40. Id. at 1819 (emphasis added).

41. Id.

42. J. BENTHAM, THE THEORY OF LEGISLATION (1802).

43. See F. GARDNER, supra note 1, at 35.

44. Id. at 35, 45.

45. But see id. at 29:

It has been shown that permissive legislation is of limited effectiveness, even when accompanied by financial inducements. Legislation should therefore require action to be taken, wherever the ultimate sources of action. But provision should be made for progressive implementation at a rate to be determined by resources and other conditions. . . .

This argument, however, presupposes that libraries should be all things to all people. See text accompanying note 2 supra.

46. F. GARDNER, supra note 1, at 23.

47. Id.

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48. Id. at 23-24.